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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/831,797	08/14/2001	Klaus Kwetkat	MULLER-26	9977

7590 10/05/2004

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EXAMINER	
DELCOTTO, GREGORY R	

ART UNIT	PAPER NUMBER
1751	

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/831,797	KWETKAT ET AL.	
	Examiner	Art Unit	
	Gregory R. Del Cotto	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *04 June 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-4 and 7-44* is/are pending in the application.

4a) Of the above claim(s) *15-27,29-32 and 38-44* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-4,7-14,28 and 33-37* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-4 and 7-44 are pending. Applicant's response filed 11/12/03 has been entered. Claims 15-27, 29-32, and 38-44 are withdrawn from further consideration as being drawn to a nonelected invention.

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Objections/Rejections Withdrawn

The following objections/rejections as set forth in the Office action mailed 6/4/04 have been withdrawn:

The rejection of claims 1-4, 8-14, 28, and 33-37 under 35 U.S.C. 103 as being unpatentable over WO 97/40124 has been withdrawn.

The rejection of claims 1-4, 8-14, 28 and 33-37 under 35 U.S.C. 103(a) as being unpatentable over Baillely et al (US 5,955,416) has been withdrawn.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section

> 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-4, 7-14, 28, and 33-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 97/40124 or in view of Dubief et al (US 6,074,633).

'124 teaches the use of at least 0.1% of anionic Gemini surfactants in detergents, cleaning products, and body care compositions. See Abstract. Additionally, the compositions may include surface active substances which are ampholytes and betaines such as lecithin and solvents for liquid formulations such as alcohols having 1 to 6 carbon atoms. Suitable foam inhibitors include monofattyacid salts which are employed in an amount of 0 to 5% by weight. These compounds preferably contain fatty acids having carbon chain lengths of from 10 to 24 carbon atoms. See column 8, lines 25-45. Additionally, anionic surfactants such as alpha-olefin sulfonates, alcohol ether sulfates, alkyl sulfosuccinates, etc., may be used in the compositions. See column 9, lines 1-20.

Specifically, '124 teaches a liquid heavy-duty detergent composition containing 13% by weight of anionic Gemini surfactant, 10.0% by weight coconut fatty acid, etc., with the remainder to weight of water. See column 11, lines 20-45.

However, '124 do not teach the use of an anionic surfactant such as an acyl glutamate in addition to the other requisite components of the composition of the instant claims.

Dubief et al teach a cosmetic composition containing at least one anionic detergent surfactant, at least one nonionic or amphoteric cosurfactant, at least one electrolyte and at least one oxyalkylenated silicone. See Abstract. Suitable anionic surfactants include alkyl sulphosuccinates, N-acyl glutamates, etc.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use an anionic surfactant such as an N-acyl glutamate in the cleaning composition taught by '124, with a reasonable expectation of success, because Dubief et al teach the equivalence of alkyl sulphosuccinates to N-acyl glutamate in a similar detergent composition and, further, '124 teach the use of alkyl sulphosuccinate surfactants.

Claims 1-4, 7-14, 28, and 33-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baillely et al (US 5,955,416) in view of Deguchi et al (US 5,154,850).

Baillely et al teach a detergent composition comprising lipases, a lipase compatible anionic surfactant system, and a gemini polyhydroxy fatty acid amide. The anionic surfactant system comprises alkyl alkoxylated sulphates having specific ratios of mono-, di-, and tri- alkoxylated sulphates. The detergent compositions provide

improved greasy soil removal over a wide range of temperatures. See Abstract. The compositions may contain from 1 to 20% by weight of the Gemini polyhydroxy fatty acid amide surfactant. See column 5, lines 30-60. Additionally, the compositions herein will generally comprise from 0 to 5% of a suds suppressor. When utilized as suds suppressors, monocarboxylic fatty acids, and salts therein are utilized. These carboxylic acids have from 10 to 24 carbon atoms. See column 18, lines 35-55. Note that these carboxylic acids are the same as the co-amphiphiles having an HLB below 6 as stated in the instant specification. These compositions may be in any form and include powder, granules, liquid, paste, gel, etc. See column 23, lines 25-35. Note that, liquid detergent compositions may include water. See column 25, lines 25-45. Suitable anionic surfactants include alkyl sulphosuccinates, acyl isethionates, alkoylated sulfates, etc. See column 5, lines 30-50.

However, Baillely et al do not teach the use of an anionic surfactant such as an acyl glutamate in addition to the other requisite components of the composition of the instant claims.

Deguchi et al teach a neutral liquid detergent composition containing 2 to 60% by weight of an alkyl glycoside, 0.1 to 10% by weight of a nonionic surfactant having an HLB of less than 5; 0.1 to 10% by weight of a nonionic surfactant having an HLB of not less than 5; and 0.01 to 8% by weight of one or more water-soluble organic or inorganic salts. See Abstract. Additionally, the compositions may contain 1 to 20% by weight of anionic surfactants such as polyoxyethylene alkylsulfates, N-acyl glutamates, alkylbenzenesulfonates, etc.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use an anionic surfactant such as N-acyl glutamate in the cleaning composition taught by Baillely et al, with a reasonable expectation of success, because Deguchi et al teach equivalence of polyoxyethylene alkylsulfates to N-acyl glutamates in a similar detergent composition and, further, Baillely et al teach the use of alkoxylated sulfates.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-4, 7-14, 28, and 33-37 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the pending claims of copending Application No. 09/831796 (Now US 6,710,022). Although the conflicting claims are not identical, they are not patentably distinct from each other because the pending claims of 09/831796 (now US 6,710,022) encompass the material limitations of the instant claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Arguments

With respect to the rejections listed above, Applicant states that neither '124 or Baillely teaches the specific surfactant of component (B) as recited by the instant claims and only through hindsight can the references be combined with the pertinent secondary references as noted above. In response, note that, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). The Examiner maintains that there is clear motivation to use the surfactants from the secondary references such as acyl glutamates in the compositions taught by '124 or Baillely et al, with a reasonable expectation of success, because the secondary references teach the equivalence of acyl glutamates to surfactants used by '124 or Baillely et al.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

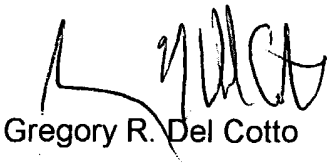
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571) 272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gregory R. Del Cotto

Primary Examiner
Art Unit 1751

GRD
February 9, 2004